

APPEAL NO. 051181
FILED JUNE 30, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 20, 2005. The hearing officer resolved the disputed issues by deciding: (1) that the appellant (claimant) did not sustain a compensable repetitive trauma injury; (2) that _____, is the date of injury pursuant to Section 408.007; (3) that the claimant's claimed injury does not extend to and include bilateral carpal tunnel syndrome, a tear to the supraspinatus tendon, acromioclavicular arthrosis, degenerative changes to the humeral head of the left shoulder, and an injury to the cervical spine; and (4) that because the claimant did not sustain a compensable injury, the claimant did not have disability from October 28, 2004, through the present. The claimant appealed, disputing the compensable injury, extent-of-injury, and disability determinations. The respondent (carrier) responded, arguing that the request for review filed by the claimant was untimely. The carrier otherwise urged affirmance of the disputed determinations.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the claimant's appeal was not timely filed with the Texas Workers' Compensation Commission (Commission).

Section 410.202(a) provides that to appeal the decision of a hearing officer, a party shall file a written request for appeal with the Appeals Panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal or a response. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)) provides in pertinent part that, for purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed. See *also* Rule 143.3(d)(1) which provides that the hearing officer's decision is deemed received five days after mailing, unless the great weight of the evidence indicates otherwise.

Rule 143.3(e) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(e) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

Commission records reflect that the hearing officer's decision was mailed to the claimant on April 28, 2005. Pursuant to Rules 102.5(d) and 143.3(d)(1), unless the great weight of the evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision on Tuesday, May 3, 2005. Although the claimant asserts in his appeal that he received the hearing officer's decision on May 4, 2005, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule. Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002. Thus, the deemed date of receipt is May 3, 2005. The 15th day after May 3, 2005, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was Tuesday, May 24, 2005. The claimant's appeal is dated May 25, 2005, and was faxed to the Commission on May 25, 2005. The claimant additionally sent a copy of its appeal to the Commission by United States Postal Service regular mail on May 25, 2005, and was date stamped as received by the Commission on May 31, 2005. The appeal, having been filed after May 24, 2005, was thus, untimely.

The hearing officer's decision and order have become final under Section 410.169.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge